

"Blending" is defined as the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or practicable for use as a motor fuel, except such blending as may occur in the process known as refining by the original refiner of crude petroleum, and except, also, the blending of products known as lubricating oil in the production of lubricating oils and greases. Taxpayers must file Schedule M with Form RMFT-5 to report blended products. See 86 Ill. Adm. Code 500.100 (This is a GIL.)

February 3, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 16, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On November 12, 1998 the Motor Fuel Review and Corrections Section informed our client that the use of the Schedule F for 'blending activity' is not allowable and further that commencing with the November 1998 liability period the tax must be paid and then a refund applied for. In conversations between the Department's PERSON1 and the client's person responsible for the filing of the return, PERSON2, PEROSN2 was informed that refunds relating to the non-highway use of the special fuels would be refunded in a timely manner, i.e. 30 days. A review of the facts and circumstances certainly does not bear out the 'timely refunding' and further, the payment of the taxes on these **immediately** refundable gallons represents an undue burden on the cash flow of the client.

We would first wish to point out that the client's use of the Schedule F for the special fuels relating to the protection of the various grades of asphalt was first authorized by the Motor Fuel Section by one PEROSN3 of that unit. The client was fully aware of the special nature of the items normally reported on Schedule F, but the authorization to use said form came from the Motor Fuel Tax Section itself. Secondly, to answer PEROSN1's comment to PERSON2 re: the Department's ability to go back three years and impose the Underground Storage Tax and the Environmental Impact Fees on the gallons, please be informed that all of these taxes have **always** been paid on the gallons reported by our client on Forms A and SA of the monthly filings.

To illustrate the complete lack of timeliness of refunds by the Department on the non-Schedule F gallons that are used for non-highway purposes we reviewed the client's monthly filings for the years 1996, 1997 and 1998 through the month of October. The results are presented below:

<u>MONTH/YEAR</u>	<u>DUE DATE</u>	<u>REFUND RECEIVED</u>
06/96	07/20/96	11/20/96
07/96	08/20/96	11/20/96
08/96	09/20/96	11/20/96
09/96	10/20/96	12/24/96
10/96	11/20/96	01/17/97
11/96	12/20/96	02/13/97
12/96	01/20/97	04/25/97
01/97	02/20/97	04/25/97
02/97	03/20/97	05/01/97
03/97	04/20/97	06/09/97
04/97	05/20/97	07/11/97
05/97	06/20/97	08/07/97
06/97	07/20/97	09/23/97
07/97	08/20/97	09/23/97
08/97	09/20/97	03/03/98
09/97	10/20/97	12/19/97
10/97	11/20/97	01/30/98
11/97	12/20/97	03/03/98
12/97	01/20/98	03/31/98
02/98	03/20/98	04/20/98
03/98	04/20/98	06/23/98
04/98	05/20/98	07/06/98
05/98	06/20/98	08/17/98
06/98	07/20/98	08/17/98
07/98	08/20/98	09/18/98
08/98	09/20/98	11/10/98
09/98	10/20/98	NOT RECEIVED
10/98	11/20/98	NOT RECEIVED

As illustrated from the preceding schedule the **average** number of days the refunds are unpaid is 60 days. Given the small number of gallons on which these refunds were due the dollar impact is not material using the Department's current interest rate of 8% per annum which is 1.315% for a sixty day period.

As stated heretofore, the other point is the undue burden on the client's cash flow as will be illustrated based upon the period January 1, 1996 through November 30, 1998 and the number of gallons of special fuels purchased.

<u>1996</u>		<u>1997</u>		<u>1998</u>	
<u>MONTH</u>	<u>GALLONS</u>	<u>MONTH</u>	<u>GALLONS</u>	<u>MONTH</u>	<u>GALLONS</u>
JAN	0	JAN	7,227	JAN	7,000
FEB	0	FEB	230	FEB	14,000
MAR	14,486	MAR	236	MAR	35,901
APR	13,552	APR	59,339	APR	77,415
MAY	46,663	MAY	59,181	MAY	60,521

JUN	42,002	JUN	73,667	JUN	91,802
JUL	112,839	JUL	108,387	JUL	135,623
AUG	97,721	AUG	96,886	AUG	110,095
SEP	55,833	SEP	63,056	SEP	121,858
OCT	89,230	OCT	118,507	OCT	104,628
NOV	57,072	NOV	55,234	NOV	68,120
DEC	<u>71,454</u>	DEC	<u>43,155</u>		
TOTALS	<u>600,852</u>		<u>685,105</u>		<u>826,963</u>

Using the total gallons for the period illustrated above of 2,112,920 @ the tax rate of \$.215 per gallon, the dollars expended would be \$454,277.80. This would convert to an annual outlay of approximately \$155,752 per year. Applying the Department's interest rate effective January 1, 1999 of 7% and an average refund period of 60 days to the purchases for the eleven months ended November 30, 1998, amounts to an annual money cost to the taxpayer of \$2,232 per year. Utilizing the company's internal rate of return of 20% raises the annual cost to almost \$6,400 per year.

If, as you state, the use of the Schedule F is incorrect and if, as we have asserted was allowable heretofore pursuant to the instructions of a Department employee and if we are indeed not a unique situation, it seems only logical that the Department develop some other method to accomplish the same thing, short of having the taxpayer undergo the financial burden of paying for these gallons each month and waiting for the refund thereon.

Your review of this matter is appreciated and if further information and/or documentation is required, please advise and it will be provided.

COMPANY was notified on November 12, 1998 that blending activity had been improperly reported. Schedule F cannot be used to report use of fuel for blending purposes. Schedule F, together with Form RMFT-5, Motor Fuel Distributor/Supplier Tax Return, is only used to report losses of motor fuel sustained on account of fire, theft, spillage, spoilage, leakage or any other provable cause. See 86 Ill. Adm. Code 500.204.

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Section 5 of the Motor Fuel Tax Law requires distributors to pay the tax "up front" on all motor fuel (of the type they are required by Section 5 of the Motor

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Fuel Tax Law to report to the Department when filing a return) used or consumed by them, whether for taxable or nontaxable purposes. If the motor fuel is consumed for statutory nontaxable purposes, a claim for credit or refund may thereafter be filed. See 86 Ill. Adm. Code 500.230. This requirement is statutory and cannot be waived. The Department shall pay all refunds due under the Motor Fuel Tax Law within 90 days after receipt of application for a refund. See 86 Ill. Adm. Code 500.265 and 35 ILCS 505/15.1 (1996 State Bar Edition). If this time limit is not met, interest shall also be paid to the taxpayer.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.